

ST 00-0252-GIL 11/16/2000 CONSTRUCTION CONTRACTORS

Construction contractors who physically incorporate tangible personal property into real estate owned by exempt organizations, such as governmental bodies, that hold tax exempt "E" numbers, can purchase such tangible personal property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. (This is a GIL.)

November 16, 2000

Dear Xxxxx:

This letter is in response to your letter dated September 15, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am a wholesale distributor of mobile home replacement parts. Many of my customers are private contractors who supply materials and labor to state and federally funded weatherization agencies.

I have spoken with two Illinois Department of Revenue Auditors on separate occasions who state that there is a ruling in the administrative code which allows these contractors to use the state organization's tax exempt 'E' number. The contractors are purchasing materials from us, such as doors and windows, to install into privately owned mobile homes. The contractors are paid by the state agency to weatherize these homes. The auditors stated that since the government agency has a 'contract' with the contractors to repair the homes they are **funding**, that the contractors may use the E number to purchase materials tax exempt. The key, they say, is the word funding. The weatherization agency does not **own** the property, but has provided charitable funding for the work.

The auditors also both stated that we need the following documentation in our files:

1. Signed contractor tax exempt certificate stating the contractor is purchasing materials from us for use in the government funded homes.
2. A letter from the exempt organization authorizing the contractor to use their E number.
3. Purchase order numbers or job names on each invoice showing exactly where the materials are being installed.

I asked these two auditors to send a copy of the ruling from the administrative code book. They both stated that the book is too large and it's impossible to find! But they assured me it's in there! I try to be very cautious about tax situations, so I tried to find the ruling myself.

Enclosed you will find a similar letter dated December 3, 1991. I wrote to your department about this same issue at that time. The letter is signed by Jerilynn T. Gorden, Staff Attorney. She provided a copy of excerpts from the Administrative Code which state that the contractor can only use the organization's E number if the materials are incorporated into real estate **owned** by the organization or government entity.

My question to you this day is, has the ruling been amended since 1991? Where do the auditors get their information? Will you please provide documentation concerning this matter if the ruling has been amended? I have enclosed copies of Section 130.2075 to ease your search. Perhaps the ruling we are looking for is located in another section.

Our customers are quite perturbed that we don't allow them to use another organization's E number. They say many other companies allow it and we need to 'get with the times'. I look forward to hearing from you, as our customers are quite anxious to have this matter resolved.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that contractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors do not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

However, contractors who physically incorporate tangible personal property into real estate owned by exempt organizations, such as governmental bodies that hold tax exempt "E" numbers, can purchase such tangible personal property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Further, 86 Ill. Adm. Code 130.2075(e) provides that tangible personal property which will be physically incorporated into public improvements, the ownership of which is required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement, is exempt from Retailers' Occupation Tax and Use Tax. To claim the exemption, contractors must provide their suppliers with the exemption identification number of the governmental unit to which the public improvements will be transferred upon completion. The pre-development transfer agreement may take any of the forms contained in subsection (e)(1-4).

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate either owned by an exempt organization, or required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement, are subject to tax. It is not enough that the tangible personal property will be physically incorporated into real estate as part of a repair funded by a governmental body with an "E" number, if the real estate does not meet the above mentioned criteria.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.